No. 138, Original

In the

Supreme Court of the United States

STATE OF SOUTH CAROLINA,

Plaintiff,

v.

STATE OF NORTH CAROLINA,

Defendant.

On Motion for Leave to File Exceptions to First Interim Report of the Special Master

NORTH CAROLINA'S BRIEF IN OPPOSITION TO SOUTH CAROLINA'S MOTION TO FILE EXCEPTIONS TO THE SPECIAL MASTER'S FIRST INTERIM REPORT

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INTRODUCTION

North Carolina files this Brief in Opposition to South Carolina's motion for leave to file exceptions to the Special Master's First Interim Report.

North Carolina did not oppose the petitions of the three Intervenors to intervene in this case, but at the same time filed no brief in support thereof before the Special Master. North Carolina did not oppose these interventions because South Carolina's Bill of Complaint unequivocally challenges the Intervenors' actions and interests and because North Carolina believes that their presence in the case will be of assistance to the parties and the Court in elucidating the complex facts involving the Catawba River and the Intervenors' actions in connection therewith. Like the Intervenors, North Carolina believes that the Special Master correctly allowed the interventions for the right reasons and has well supported those reasons in her Interim Report.

ARGUMENT

For the reasons elaborated in the Opposition Brief of the Intervenors, North Carolina opposes the diversion of energy and resources from the very extensive discovery required in this case to deal with the filing of exceptions and briefing in connection with an interlocutory appeal of the Special Master's decision. North Carolina agrees with Intervenors that South Carolina in her motion has greatly exaggerated her burdens resulting from the interventions. So far, South Carolina's main expense has been involved in disputing the interventions and the Special Master's initial Order, by parties whose actions South Carolina

challenged by name in her own Bill of Complaint. In contrast, the Intervenors have undertaken to coordinate their actions so as to minimize any additional burden their presence might make. As Intervenors point out, South Carolina has availed herself of the opportunity to engage in extensive discovery of Intervenors, who possess a wealth of relevant knowledge in this case.

In her motion, South Carolina argues that allowing the intervention will open the floodgates to all others. South Carolina, however, downplays the degree to which her Bill of Complaint singles out the Intervenors' conduct. The First Interim Report of the Special Master correctly notes that the Bill of Complaint almost exclusively deals with interbasin transfers. Specifically, the First Interim Report states:

> a fair reading of South Carolina's Complaint and other papers, including its preliminary injunction motion, shows that interbasin transfers are not merely "mentioned," but are the primary if not exclusive means by which South Carolina claims to have been harmed.

(First Interim Report of the Special Master at 38) The Special Master also accurately observes that the activities of the three Intervenors are mentioned by name. (*Id.* at 21, 26-27, 31) South Carolina's Bill of Complaint is squarely based upon her assertion that North Carolina's interbasin transfers "exceed North

Carolina's equitable share of the Catawba River." (Bill of Compl. ¶ 4) The motions to intervene have been brought by three entities whose conduct is expressly referenced in the Bill of Complaint. Accordingly, South Carolina's assertion that the Special Master's order will result in a myriad of other water users seeking to intervene is without merit.

CONCLUSION

South Carolina's motion to file exceptions to the Special Master's First Interim Report should be denied.

Respectfully submitted,

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